

REMARKS

This patent application presently includes claims 1-46, of which claims 1-5, 16-18, 24-26 and 36 were rejected, claims 6-15, 19-23 and 27-31 were objected to, claims 32-35 were withdrawn by the examiner, and claims 39-46 are newly added. The claims have been amended to overcome objections raised by the examiner, claim 1, 16, 24 are amended to define the invention more clearly, and all rejections are respectfully traversed.

The examiner has made the restriction requirement final and has withdrawn claims 32-35 from further consideration. The only support offered by the examiner is that the applicant argued that there was no additional burden to search claims 32-35. However, the examiner failed to note that claim 32 was also amended to recite "A method for improving or planning the improvement of the vision of an eye," precisely the same invention claimed in claim 1.

As a result, the original basis for requiring restriction was no longer present.

It is therefore believed that making the restriction final was improper and that all of the claims in this application should be examined on the merits.

Claims 6-15, 19-23 and 27-31 were objected to as being in improper form, because they contain nested multiple dependent claims. In response, the dependencies of these claims have been amended to avoid having a multiple dependent claim dependent from a multiple dependent claim. In addition, claims 37-46 were added to restore some of the dependencies destroyed by the amendment to the claims.

Claims 5, 18, 26 and 36 were rejected as indefinite. As for claims 5, 18 and 26, the examiner noted that there was an insufficient antecedent basis for "the HIGH point" at line 2 of each claim. In response, the undersigned notes that "the HIGH point" has a very specialized meaning within the present patent application (see page 4, lines 3-7). Specifically, that term refers to the point on the surface of the cornea which is most distant from the reference plane of the raster scanner. Therefore, referring to "the HIGH point" is similar to referring to the interior of an enclosure, in that every cornea has one, and it is therefore not necessary to have separate antecedent basis for the term in a claim. Accordingly, it is requested that these rejections be withdrawn.

As for claim 36, the examiner noted that there was no antecedent basis for "said shifting step" in line 1. In response, the claim has been amended to refer to a "modifying" step, which as the examiner observed does have an antecedent basis in claim 1. Accordingly, this rejection should now be withdrawn.

Claims 1-5, 16, 18, 24, 26 and 36 were rejected as anticipated by Lieberman, International Publication No. WO 2000/19918. It should be noted that this publication is a publication of the present inventors. This rejection is respectfully traversed. This publication does not teach or even suggest the present invention.

The undersigned agrees with the examiner's understanding of the publication. However, it should be noted that the publication discloses modifying the curvature of an arc to introduce the amount of diopter correction indicated by a refraction test. That is, diopters may be added to the lens (radius of curvature reduced) or subtracted from a lens (radius of curvature increased), depending on what refractive correction is required for the eye. Referring to FIG. 11 of the present application, this would result in the point of focus of element 130 being drawn away from the local Z axis if diopters need to be added and moved towards the local Z axis if diopters needs to be subtracted. The movement is determined entirely by the required refraction correction. In contrast, the claims define that the model is modified so as to shift points of focus to a predefined reference axis. This shift is independent of the required refraction correction and may, in fact, be inconsistent with (opposite to) the required refraction correction.

It should also be noted that the claims now define that the modifying step (or shape of the area of focus) is provided "to reduce focus scatter." The concept of focus scatter improvement is shown in FIGS. 5-10 of the application and discussed at page 13, line 29 through page 14, line 22. To the inventors' knowledge, focus scatter and its reduction through "orthogonalization" was first disclosed in the present application. It certainly was unknown at the time WO 2000/19918 was published and is not taught or suggested in that publication. On the other hand, as explained above, orthogonalization often requires an adjustment in diopters which is opposite to that required for correction of refraction. Thus, those skilled in the art, being aware of WO 2000/19918 would not be inclined to follow the teachings of the claims of the present application, without the disclosure of the present application.

In view of the foregoing, claims 1-5, 16, 18, 24, 26 and 36 are not and could not be anticipated by WO 2000/19918. This rejection should be withdrawn and the claims allowed.

Claims 17 and 25 were rejected as obvious over WO 2000/19918 in view of Belkin et al., U.S. Patent No. 5,620,435. This rejection is respectfully traversed. Neither reference, nor their combination renders the present claims obvious.

Initially, it is noted that the examiner cited Belkin for its disclosure of extracapsular cataract extraction. As best as can be determined, Belkin discloses nothing about the existence of focus scatter

or its reduction. Moreover, it adds nothing to WO 2000/19918 that would render claims 1-5, 16, 18, 24, 26 and 36 unpatentable. Those claims therefore remain patentable over the combination of Lieberman and Belkin. Claims 17 and 25 depend from claims 16 and 24, respectively and are allowable based upon their dependence from an allowable claim.

Applicants attorney has made every effort to place this patent application in condition for allowance. It is therefore earnestly requested that this patent application, as a whole, receive favorable reconsideration and that all of the claims be allowed as presently constituted, including claims 32-35. Should there remain any unanswered questions, the examiner is requested to call the applicant's undersigned attorney at the telephone number indicated below.

Applicant's attorney has paid all fees believed to be due as a result of the present amendment. The Commissioner is authorized to deduct any additional fees believed due, or credit any overpayment to our Deposit Account No. 50-4711.

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